BLAINE COUNTY
BOARD OF COMMISSIONERS

IBLA 84-686 Decided July 31, 1986

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, dismissing protest of proposed competitive sale of public land tracts. W-86116 through W-86120, and W-86122.

Appeal dismissed.

1. Appeals -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Standing to Appeal

A County Board of Commissioners lacks standing to appeal the terms of a proposed land sale where the alleged injury is to adjoining landowners who have grazing privileges on the land to be sold. The doctrine of parens patriae will not support a finding of standing in a state or local government body where no harm to state or local interests has been established apart from the injury to the individuals affected.

APPEARANCES: Joseph J. Divis, Esq., County Attorney, Blaine County Board of Commissioners, Brewster, Nebraska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Blaine County Board of Commissioners has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated May 14, 1984, dismissing its protest of the terms of the proposed competitive sale of certain parcels of public land, W-86116 through W-86120, and W-86122.

On January 20, 1984, BLM published a notice in the Federal Register offering the tracts of land involved herein, situated in Blaine County, Nebraska, and totaling 356.4 acres, for sale to the adjoining landowners by modified competitive bidding. See 49 FR 2545 (Jan. 20, 1984). Statutory authority for the sale is found in section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1713 (1982). The notice stated that the parcels "will be offered only under a sealed bid process to the adjoining landowners" and that at the close of the sale "the high bidder will be notified in writing within 30 days whether or not the Bureau can accept the bid." 1/ 49 FR at 2545.

1/ The notice further stated that Rex Sadler and Neal Keller were the grazing lessees and owners of certain range improvements as to, respectively, parcels W-86118 and W-86120, and that, as a condition of sale, if Sadler and

By letter dated February 2, 1984, appellant protested the proposed competitive sale, contending in part that the method of "one-time" sealed bidding was not acceptable. The essence of the protest was that the procedure did not permit the holder of a grazing lease on an offered parcel of land to submit a supplemental bid, matching the high bid, where he was not the original high bidder, so that he could ultimately purchase the land. On March 14, 1984, BLM published another notice in the Federal Register postponing the proposed competitive sale pending a decision on appellant's protest.

In its May 1984 decision, BLM dismissed appellant's protest, noting in relevant part that, as a "matter of policy," it had adopted the method of "one-time" sealed bidding for modified competitive sales 2/ such that all adjoining landowners, i.e., the designated bidders, have an "equal opportunity" to purchase an offered parcel of land. BLM further stated this was the "only acceptable method of bidding for modified competitive and competitive sales." BLM stated: "This approach has been used efficiently and effectively by BLM in other areas. BLM is required to obtain fair market value when selling land, and this approach achieves that end while preserving any appropriate equities." 3/

In its statement of reasons for appeal, appellant contends that BLM has the "discretion" to conduct a modified competitive sale by sealed bid, "permitting the current lessee to purchase the land by meeting the highest sealed bid submitted." Appellant requests BLM to conduct the sale "in such manner."

Appellant argues that under modified competitive sales, as defined by BLM in Instruction Memorandum (IM) No. 83-524, dated May 10, 1983, and 43 CFR

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fn. 1 (continued)
Keller were not the successful bidders for these parcels, such bidders, prior to conveyance of the lands, would be required to reimburse the lessees for the value of their improvements. The notice also stated that if the grazing lessees on parcels W-86116 through W-86120, and W-86122, did not purchase the parcels or waive their grazing privileges, the patents of such parcels would include a provision making the land subject to existing grazing use.

2/ The BLM decision recognized three options for selling public land, viz., noncompetitive direct sale, modified competitive sale, and competitive sale. Modified competitive sale was described as offering land for competitive bidding only by adjoining landowners.

3/ BLM also stated that: "Two of the proposed modified competitive sale parcels (W-86119 and W-86120) are encumbered with 10-year grazing leases, and the remaining parcels (W-86116, W-86117, W-86118, and W-86122) are encumbered with 1-year grazing leases. If the high bidder is not the authorized grazing user, the grazing authorization will be continued by a patent reservation for the term of the BLM lease. At least 2 years will be extended for those sale tracts encumbered with a 1-year grazing lease."

2711.3-2(a)(1), BLM can either limit the persons permitted to bid on a particular parcel or permit certain designated bidders to meet the highest bid. It is further argued that the latter option, if adopted in the present case, by offering grazing lessees the opportunity to match the highest bid, is most likely to achieve the purpose of modified competitive sales, i.e., to avoid the disruption of existing users dependent on the land.

In light of the fact this appeal has been prosecuted by the Blaine County Board of Commissioners rather than the grazing lessees assertedly adversely affected, this Board issued an order directing appellant to show how it has been adversely affected by the BLM decision. In response, appellant named the lessees who hold grazing privileges in the subject tracts and indicated they were the persons adversely affected by the decision to sell the tracts. Appellant contends that the individuals are all residents of Blaine County who own property in the county. Appellant asserts it is intervening for the benefit of its citizens.

[1] It is well settled that standing to appeal to the Board of Land Appeals is limited to a party to the case who is adversely affected by the decision appealed from. 43 CFR 4.410; Sharon Long, 83 IBLA 304 (1984); Oregon Natural Resources Council, 78 IBLA 124 (1984); In re Pacific Coast Molybdenum Co., 68 IBLA 325 (1982). In the absence of an adverse effect upon appellant Board of Commissioners from the BLM decision, standing must be predicated upon the concept of parens patriae. Although appellant has cited no Board precedents dealing with this aspect of standing, there have been several Federal court cases which are helpful on the issue. Generally, the courts have found a state to lack standing to sue where the injury suffered as a result of an alleged wrong is limited to a narrowly defined group of individuals and harm to the economy as a whole is comparatively insignificant. Commonwealth of Pennsylvania v. Kleppe, 533 F. 2d 668, 675 (D.C. Cir.), cert. denied, 429 U.S. 977 (1976); see Georgia v. Pennsylvania Railroad Co., 324 U.S. 439, 451 (1945) (finding a state interest "apart from that of particular individuals who may be affected").

With respect to the standing of a state to sue the Federal Government, the Supreme Court in Massachusetts v. Mellon, 262 U.S. 447 (1923), while recognizing the right of a state to sue on behalf of its citizens, found "it is no part of [a state's] duty or power to enforce their rights in respect of their relations with the Federal Government." Id. at 485-86. To similar effect is the statement in Georgia v. Pennsylvania Railroad Co., supra, that "Massachusetts v. Mellon and Florida v. Mellon, [273 U.S. 12 (1927),] make plain that the United States, not the State, represents the citizens as parens patriae in their relations to the federal government." 324 U.S. at 446. Although the court in Commonwealth of Pennsylvania v. Kleppe, supra, did not find it necessary to decide whether a state may ever have standing in its parens patriae capacity to sue the Federal Government, the Supreme Court has subsequently stated unequivocally that a state does not have standing as

parens patriae to bring an action against the Federal Government. Alfred L. Snapp & Son, Inc. v. Puerto Rico, 458 U.S. 592, 610 n. 16 (1982) (citing Massachusetts v. Mellon, supra). 4/ We find these precedents persuasive in concluding that appellant, which has not been adversely affected by the decision below, has no standing to prosecute this appeal parens patriae.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Gail M. Frazier
Administrative Judge.

4/ This does not, however, preclude Congress from conferring parens patriae standing on a state or local agency. See Maryland People's Counsel v. FERC, 760 F.2d 318 (D.C. Cir. 1985).